UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

MARCUS EUGENE DASH,

Plaintiff.

-against-

DOWNSTATE CORRECTIONAL FACILITY.

Defendant.

19-CV-5448 (PGG)
ORDER OF SERVICE

PAUL G. GARDEPHE, United States District Judge:

Plaintiff brings this *pro se* action under 42 U.S.C. § 1983, alleging that Defendant violated his federal constitutional rights. By order dated July 24, 2019, the Court granted Plaintiff's request to proceed without prepayment of fees, that is, *in forma pauperis* ("IFP").¹

STANDARD OF REVIEW

The Court must dismiss an IFP complaint, or portion thereof, that is frivolous or malicious, fails to state a claim on which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2)(B); see Livingston v. Adirondack Beverage Co., 141 F.3d 434, 437 (2d Cir. 1998). The Court must also dismiss a complaint when the Court lacks subject matter jurisdiction. See Fed. R. Civ. P. 12(h)(3). While the law mandates dismissal on any of these grounds, the Court is obliged to construe pro se pleadings liberally, Harris v. Mills, 572 F.3d 66, 72 (2d Cir. 2009), and interpret them to raise the "strongest [claims] that they suggest," Triestman v. Fed. Bureau of Prisons, 470 F.3d 471, 474 (2d Cir. 2006) (internal quotation marks and citations omitted) (emphasis in original).

¹ Prisoners are not exempt from paying the full filing fee even when they have been granted permission to proceed IFP. See 28 U.S.C. § 1915(b)(1).

DISCUSSION

A. Downstate Correctional Facility

Plaintiff's claims against Downstate Correctional Facility must be dismissed. Section 1983 provides that an action may be maintained against a "person" who has deprived another of rights under the "Constitution and Laws." 42 U.S.C. § 1983. Downstate Correctional Facility is not a "person" within the meaning of § 1983. See Will v. Mich. Dep't of State Police, 491 U.S. 58 (1989) (holding that a state is not a "person" for the purpose of § 1983 claims); Zuckerman v. Appellate Div., Second Dep't Supreme Court, 421 F.2d 625, 626 (2d Cir. 1970) (holding that a court is not a "person" within the meaning of 42 U.S.C. § 1983); Whitley v. Westchester Cnty: Corr. Fac. Admin., No. 97-CV-420 (SS), 1997 WL 659100, at *7 (S.D.N.Y. Oct. 22, 1997) (noting that a correctional facility or jail not a "person" within the meaning of § 1983).

Therefore, Plaintiff's claims against Downstate Correctional Facility must be dismissed. See 28 U.S.C. § 1915(e)(2)(B)(ii).

B. Rule 21 of the Federal Rules of Civil Procedure

Plaintiff asserts that, in June 2018, an unnamed medical staff person at Downstate Correctional Facility subjected him to a physical examination that violated his constitutional rights. The Clerk of Court is therefore directed, under Rule 21 of the Federal Rules of Civil Procedure, to amend the caption of this action to add John Doe as a Defendant. This amendment is without prejudice to any defenses that this Defendant may wish to assert.

C. John Doe Defendant

Under *Valentin v. Dinkins*, a *pro se* litigant is entitled to assistance from the district court in identifying a defendant. 121 F.3d 72, 76 (2d Cir. 1997). In the complaint, Plaintiff supplies sufficient information to permit the New York State Department of Corrections and Community Supervision to identify the medical staff person who examined Plaintiff upon his transfer to

Downstate Correctional Facility in June 2018. It is therefore ordered that the New York State
Attorney General, who is the attorney for and agent of the New York State Department of
Corrections and Community Supervision, must ascertain the identity of the John Doe whom
Plaintiff seeks to sue here and the address where the defendant may be served. The New York
State Attorney General must provide this information to Plaintiff and the Court within sixty days
of the date of this order.

Within thirty days of receiving this information, Plaintiff must file an amended complaint naming the John Doe defendant. The amended complaint will replace, not supplement, the original complaint. An amended complaint form that Plaintiff should complete is attached to this order. Once Plaintiff has filed an amended complaint, the Court will screen the amended complaint and, if necessary, issue an order directing the Clerk of Court to complete the USM-285 forms with the addresses for the named John Doe Defendants and deliver all documents necessary to effect service to the U.S. Marshals Service.

CONCLUSION

The Clerk of Court is directed to mail a copy of this order to Plaintiff, together with an information package.

The Court dismisses Plaintiff's claims against Downstate Correctional Facility. See 28 U.S.C. § 1915(e)(2)(B)(ii).

The Clerk of Court is directed to add John Doe as a Defendant under Fed. R. Civ. P. 21.

The Clerk of Court is directed to mail a copy of this order and the complaint to the New York State Attorney General at: 28 Liberty Street, New York, New York 10005.

The Court certifies under 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good faith, and therefore IFP status is denied for the purpose of an appeal. *Cf.*

Coppedge v. United States, 369 U.S. 438, 444-45 (1962) (holding that an appellant demonstrates good faith when he seeks review of a nonfrivolous issue).

The Clerk of Court is directed to docket this as a "written opinion" within the meaning of Section 205(a)(5) of the E-Government Act of 2002.

SO ORDERED.

Dated: Ottober 32 22 19 New York, New York

United States District Judge

			DISTRICT COURT	
(In the space above enter the j			the full name(s) of the plaintiff(s).)	AMENDED COMPLAINT under the Civil Rights Act, 42 U.S.C. § 1983
				Jury Trial: □ Yes □ No (check one)
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cannot please addition listed in Part I.	fit the nat write "se nal sheet n the abo Addresse	mes of all we attach of paper we caption we should	he full name(s) of the defendant(s). If you for the defendants in the space provided, ed" in the space above and attach an with the full list of names. The names in must be identical to those contained in not be included here.)	
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Was		
anyone else		
involved?		
	(
	(-0.00 to 0.000)	
Who else saw what happened?	III.	Injuries:
	lf yo treatn	u sustained injuries related to the events alleged above, describe them and state what medical ment, if any, you required and received.
	IV.	Exhaustion of Administrative Remedies:
	broug prisor	Prison Litigation Reform Act ("PLRA"), 42 U.S.C. § 1997e(a), requires that "[n]o action shall be that with respect to prison conditions under section 1983 of this title, or any other Federal law, by a ner confined in any jail, prison, or other correctional facility until such administrative remedies as are able are exhausted." Administrative remedies are also known as grievance procedures.
	Α.	Did your claim(s) arise while you were confined in a jail, prison, or other correctional facility?
		Yes No

	ng rise to your claim(s).
Do	es the jail, prison or other correctional facility where your claim(s) arose have a grievance cedure?
Ye	S No Do Not Know
	es the grievance procedure at the jail, prison or other correctional facility where your claim(s) se cover some or all of your claim(s)?
Υe	No Do Not Know
lf `	ES, which claim(s)?
Dio	I you file a grievance in the jail, prison, or other correctional facility where your claim(s) arose?
Υe	s No
	NO, did you file a grievance about the events described in this complaint at any other jail, son, or other correctional facility?
Ye	S No
	rou did file a grievance, about the events described in this complaint, where did you file the evance?
1.	Which claim(s) in this complaint did you grieve?
2.	What was the result, if any?
3. the	What steps, if any, did you take to appeal that decision? Describe all efforts to appeal to highest level of the grievance process.
1f ×	ou did not file a grievance:
11	-

	<u>2</u> .	If you did not file a grievance but informed any officials of your claim, state who you informed, when and how, and their response, if any:				
G.	remedi	Please set forth any additional information that is relevant to the exhaustion of your administrative remedies.				
Note:	You m	ay attach as exhibits to this complaint any documents related to the exhaustion of your strative remedies.				
v.	Relief:					
		want the Court to do for you (including the amount of monetary compensation, if any, that g and the basis for such amount).				

		
	VI.	Previous lawsuits:
On these	Α.	Have you filed other lawsuits in state or federal court dealing with the same facts involved in this action?
claims		Yes No
	В.	If your answer to A is YES, describe each lawsuit by answering questions 1 through 7 below. (If there is more than one lawsuit, describe the additional lawsuits on another sheet of paper, using the same format.)
		1. Parties to the previous lawsuit:
		Plaintiff
		Defendants
		2. Court (if federal court, name the district; if state court, name the county)
		3. Docket or Index number
		4. Name of Judge assigned to your case
		5. Approximate date of filing lawsuit
		6. Is the case still pending? Yes No
		If NO, give the approximate date of disposition
		7. What was the result of the case? (For example: Was the case dismissed? Was there judgment in your favor? Was the case appealed?)
On other claims	C.	Have you filed other lawsuits in state or federal court otherwise relating to your imprisonment? Yes No
	D.	If your answer to C is YES, describe each lawsuit by answering questions 1 through 7 below. (If there is more than one lawsuit, describe the additional lawsuits on another piece of paper, using the same format.)
		1. Parties to the previous lawsuit:
		Plaintiff
		2. Court (if federal court, name the district; if state court, name the county)
		3. Docket or Index number
		4. Name of Judge assigned to your case
		5. Approximate date of filing lawsuit

6.	Is the case still pending? Yes No
	If NO, give the approximate date of disposition
7.	What was the result of the case? (For example: Was the case dismissed? Was there judgment in your favor? Was the case appealed?)
I declare ur	der penalty of perjury that the foregoing is true and correct.
Signed this	day of
	Signature of Plaintiff
	Inmate Number
	Institution Address
	plaintiffs named in the caption of the complaint must date and sign the complaint and provide r inmate numbers and addresses.
I declare un	der penalty of perjury that on this day of 20, I am delivering
=	nt to prison authorities to be mailed to the Pro Se Office of the United States District Court for
the Southern	District of New York.
	Signature of Plaintiff:

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